IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

WRIT PETITION NO.8251 OF 2004

Mr.D.R.Singh for the Petitioner.

Mr.S.J. Bhor for the BMC.

Office Notes, Office Memoranda of Coram, appearances, Court's order or directions	Court's or Judge's orders
	CORAM: D.K.DESHMUKH, J.
	DATED: 17TH AUGUST,2005

P.C.:

1. Rule. Returnable forthwith. Heard finally by consent of parties.

2. The Petitioner/Plaintiff had applied for amendment in the plaint. Defendant No.1 had given his no objection for carrying out amendment in the plaint. Defendant No.2 had not opposed the amendment. Perusal of the order impugned shows that the learned trial court while rejecting the application for amendment has gone into merits of the contentions

that were raised by the Petitioner/Plaintiff by amendment. The approach is obviously wrong. Whether the Plaintiff is able to establish what he wants to plead by amendment is not relevant at the time of granting the amendment. In my opinion, therefore, the order impugned is absolutely illegal. It is liable to be set aside.

3. In the result, therefore, the petition succeeds and is allowed. Rule made absolute in terms of prayer clause (a). No order as to costs.

Certified copy expedited.

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